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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/733,905	12/11/2003	Oscar Romero	6736-000015	8461
27572	7590	09/27/2005	EXAMINER	
HARNESS, DICKEY & PIERCE, P.L.C. P.O. BOX 828 BLOOMFIELD HILLS, MI 48303			HEPPERLE, STEPHEN M	
			ART UNIT	PAPER NUMBER
			3753	
DATE MAILED: 09/27/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/733,905	Applicant(s) ROMERO, OSCAR	
	Examiner Stephen M. Hepperle	Art Unit 3753	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
 4a) Of the above claim(s) 7,8,18-27 and 34 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 5,6 and 9 is/are allowed.
- 6) ☒ Claim(s) 1-4,10-17,28-33 and 35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12/11/03</u> . | 6) <input type="checkbox"/> Other: _____ |

This application contains claims directed to the following patentably distinct species of the claimed invention: the species of Fig.3 and the species of Fig. 4.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 5-6, 9-16, 28-29, and 32-33 are seen as generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

During a telephone conversation with Dave McClaughry on 20 September 2005, a provisional election was made without traverse to prosecute the invention of Fig. 3, claims 1-6, 9-17, 28-33, and 35. Affirmation of this election must be made by applicant in replying to this

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Office action. Claims 7-8, 18-27, and 34 stand withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is advised to review claims 21 and 22 for proper dependency. These claims appear to recite details of the Fig. 3 embodiment, but depend from claim 19, which is seen by the examiner as directed specifically to the Fig. 4 embodiment.

Claims 11-16 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The specification does not appear to provide support for “a second portion extending generally perpendicularly to said first portion” of the neck. While the levers 106, 108 are shown as perpendicular to the neck in Figs. 7-8, they are not described as such and claims 12-16 recite the levers as separate from the neck, not as part of the neck. Clarification is needed without the addition of new matter.

Claims 1-4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, line 7, should “control part” be “control port”?

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 10, 17, 28-33, and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Scheuermann. Scheuermann (Figs. 9, 11) shows a mixing faucet with a first 3 and second 5 moving disks controlling flow from two inlets 9 and outlet 12. Each disk has two flow paths, one of which is a control port, and the other is seen as a “pass-through port” (which happens to also provide control). Each disk is controlled by a lever 35 or 36 extending perpendicularly from the axis of the valve housing. Each disk is connected to its respective lever by disk extension (stem) 17, 19, which extend through the top of the valve body (claims 32-33).

Claim 28 is rejected under 35 U.S.C. 102(b) as being anticipated by Williams. Williams handle 29 extends through the side of faucet housing 75 to rotate disk 49 to control flow to spout tube 25.

Claims 1-4 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Claims 30-31 would be allowable if rewritten to clarify that the “pass-through port” provides no flow control over the range of disk rotation that does provide control through the control port, if it also includes all of the limitations of the base claim and any intervening claims.

Claims 5-6 and 9 are allowed. While at least one reference (Orlandi 4,946,134) shows a rotating disk 15 that has an “actuating arm extending radially” from the disk (unnumbered tab), it is not seen as an obvious modification to Scheuermann.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Howes shows another disk valve with a radially extending arm. Nicklas et al. shows a knob 244 that moves disk 150, while lever 36 moves lower disk 58. Hernandez et al. shows another faucet valve with a moving disk.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen M. Hepperle whose telephone number is 571-272-4913. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Mancene can be reached on 571-272-4930. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Stephen M. Hepperle". The signature is stylized with a large, sweeping "S" and a long, horizontal stroke extending to the right.

Stephen M. Hepperle
Primary Examiner
Art Unit 3753

SMH